UNITED STATES PATENT AND TRADEMARK OFFICE

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10/824,064	04/14/2004	Richard D. Dettinger	ROC920030346US1	6073

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte RICHARD D. DETTINGER, DANIEL P. KOLZ,
FREDERICK A. KULACK, and SHANNON E. WENZEL

_____

Appeal 2009-005853[1]
Application 10/824,064
Technology Center 2100

_____

Before LANCE LEONARD BARRY, JEAN R. HOMERE, and
JAMES R. HUGHES, *Administrative Patent Judges.*

HOMERE, *Administrative Patent Judge.*

DECISION ON APPEAL[2]

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[1] Filed April 14, 2004. The real party in interest is International Business
Machines, Corp. (App. Br. 3.)
[2] The two-month time period for filing an appeal or commencing a civil
action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing,
as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE"
(paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery
mode) shown on the PTOL-90A cover letter attached to this decision.

I. STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) (2002) from the Examiner's final rejection of claims 1-59. (App. Br. 5.) We have jurisdiction under 35 U.S.C. § 6(b) (2008).

We affirm.

Appellants' Invention

Appellants invented a method for validating XHTML documents defining user interfaces. In particular, after parsing a first set of documents, their attributes are parsed, examined, and compared with attributes of previously parsed control documents to determine if the structures of such documents are equivalent to those of the first set of documents. (Spec. ¶¶ [0009, 0021].)

Illustrative Claim

Independent claim 1 further illustrates the invention. It reads as follows:

1.   A method of testing content, comprising:

parsing, by a parser, two or more documents in tandem on an element-by-element basis, whereby the elements of each of the documents are sequentially parsed;

upon parsing each of the respective sequential elements in a first document of the two or more documents and each of the other documents, comparing the respective parsed elements to one another; and

on the basis of the comparison, determining whether the documents are at least equivalent.

Prior Art Relied Upon

The Examiner relies on the following prior art as evidence of
unpatentability:

Brook   US 2002/0038320 A1   March 28, 2002

Rejection on Appeal

The Examiner rejects claims 1-59 under 35 U.S.C. § 103(a) as being
unpatentable over Brook.

Appellants' Contentions[3]

Appellants contend that Brook does not teach comparing two
documents to determine if they are equivalent, as recited in independent
claim 1. (App. Br. 11-13.) According to Appellants, Brook teaches
comparing a first document with a reference in it to a Validation Reference
Document (VRD) to determine whether the first document is "structurally
equivalent" to the VRD document, as opposed to their being simply
"equivalent". (*Id.* at 13.)

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[3] We have only considered those arguments that Appellants actually
raised in the Briefs. Arguments Appellants could have made but chose not
to make in the Briefs have not been considered and are deemed to be
waived. *See* 37 C.F.R. § 41.37(c)(1)(vii). Appellants have submitted
additional arguments in the Reply Brief. However, these arguments are not
in response to new issues raised in the Examiner's Answer. We find these
arguments untimely. Consequently, we decline to consider them.

Examiner's Findings and Conclusions

The Examiner construes the limitation "equivalent" as "structurally equivalent" consistent with Appellants' disclosure. As a result, the Examiner finds that Brook's disclosure of comparing the first document with the reference document to determine whether they are structurally equivalent teaches a comparison for determining whether the documents are equivalent, as recited in independent claim 1. Therefore, the Examiner concludes that Brook renders the claim unpatentable. (Ans. 31-32.)

II. ISSUE

The pivotal issue in this appeal is whether Appellants have shown that the Examiner erred in finding that Brook teaches or suggests comparing a first document with a reference document to determine whether they are equivalent, as recited in independent claim 1.

III. FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

1. Appellants' Specification indicates that attributes of documents are compared to determine whether the documents are structurally equivalent with one another. (Spec. ¶ [0009].)

2. Brook discloses a validation checking of a markup language document by comparing the syntactic elements of the parsed document with the representation of a Document Type Definition (DTD) or an Extended

Markup Language (XML) schema to thereby verify the correct syntactic placement of the document attributes. (Brook, Abstract, ¶¶ [0236-0237].)

IV. ANALYSIS

Independent claim 1 requires, *inter alia*, comparing a first document with a reference document to determine whether the documents are equivalent. (App. Br. 15, Claims App'x, claim 1.)

As set forth in the Findings of Fact section, Appellants' Specification indicates that documents attributes are compared to determine whether the documents are structurally equivalent to one another. (FF. 1.) We therefore agree with the Examiner that the determination of whether the documents are equivalent can be reasonably construed as whether the documents are structurally equivalent. Since, as admitted by Appellants, Brook explicitly teaches comparing syntactic elements of a document with syntactic elements of DTD schema to determine whether these documents are structurally equivalent with one another, we agree with the Examiner that Brook teaches the disputed limitations. It therefore follows that Appellants have not shown that the Examiner erred in finding that the proffered combination teaches the disputed limitations recited in independent claim 1.

Since Appellants argued claims 2-59 together with claim 1, these claims fall with claim 1 in accordance with 37 C.F.R. § 41.37(c)(1)(vii).

V. SUMMARY

Appellants have not established that the Examiner erred in rejecting claims 1-59 under 35 U.S.C. § 103(a) as being unpatentable over Brook. We therefore affirm this rejection.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2009).

AFFIRMED

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